

AUG 19 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAYMOND D. CHEELY, JR.,

Defendant - Appellant.

No. 02-35402

D.C. No. CV-98-00329-a-JKS
CR-92-00073-a-JKS

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
James K. Singleton, District Judge, Presiding

Argued and Submitted August 11, 2003
Anchorage, Alaska

Before: PREGERSON, CANBY, and McKEOWN, Circuit Judges.

The district court did not abuse its discretion in denying Cheely's request
for an evidentiary hearing on the question of whether the government knowingly

* This disposition is not appropriate for publication and may not be cited to or by
the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

used Adams' perjured testimony during Cheely's trial.¹ When viewed against the record, Cheely's allegations of perjured testimony, if proven, would not state a claim for relief. *See* 28 U.S.C. § 2255; *United States v. Schaflander*, 743 F.2d 714, 717 (9th Cir. 1984). Each of the allegedly false statements admitted at trial were cumulative of other evidence. Furthermore, Adams' credibility was seriously undermined by impeachment at trial. *Cf. United States v. Cheely*, 114 F.3d 1196 (9th Cir. 1997) (unpublished) (noting the "overwhelming amount of impeaching evidence against Adams"). Thus, there was not a reasonable likelihood that the testimony affected the verdict against Cheely. *See United States v. Agurs*, 427 U.S. 97, 103-04 (1976).

The district court did not abuse its discretion in denying Cheely's request for an evidentiary hearing on the question whether the government withheld evidence from Cheely in violation of *Brady v. Maryland*, 373 U.S. 1194 (1963). The allegations made by Cheely in his request, when viewed against the record, do not state a claim under *Brady*. The record demonstrated that the allegedly withheld evidence was available to Cheely during discovery, and therefore it was

¹ We review for abuse of discretion the district court's decision to deny Cheely's request for evidentiary hearings. *See United States v. Christakis*, 238 F.3d 1164, 1168 (9th Cir. 2001).

not suppressed by the government. *See id.* at 87.

AFFIRMED.